

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

05 CV 10215 GAO

MAGISTRATE JUDGE MBBANDREW JEUNE,
Plaintiff

C.A. No. _____

v.

OFFICER JOHN MCELROY, OFFICER
CARLOS AQUINO, OFFICER DANIEL MCNEIL,
OFFICER FRANK GREENRIDGE,
LIEUTENANT TIMOTHY HOGAN, and the
CITY OF CAMBRIDGE
Defendants

COMPLAINT

RECEIPT # 61799
 AMOUNT \$ 150
 SUMMONS ISSUED yes
 LOCAL RULE 4.1 1
 WAIVER FORM 1
 MCF ISSUED 1
 BY DPTY. CLK. WLM

INTRODUCTION

1. This is an action for money damages for violations of the Plaintiff's constitutional rights brought pursuant to 42 U.S.C. §1983. Plaintiff Andrew Jeune alleges that the Defendant police officers illegally searched him, falsely arrested him and used excessive force in effectuating that arrest, in violation of the Fourth and Fourteenth Amendments to the United States Constitution and the Massachusetts Civil Rights Act, M.G.L. c. 12, §11I. The Plaintiff further alleges that the City of Cambridge has demonstrated a custom and policy of deliberate indifference to the constitutional rights of its citizens.

JURISDICTION

2. Jurisdiction is based upon 28 U.S.C. §§1331 and 1343, and on the pendent jurisdiction of this court to entertain related claims arising under state law.

PARTIES

3. Plaintiff Andrew Jeune is a resident of Cambridge, Massachusetts.

4. Defendant Officer John McElroy is an employee of the Cambridge Police Department, acting under color of law at all time relative to this Complaint, and is sued in his individual capacity as a police officer for the Defendant City of Cambridge.
5. Defendant Officer Carlos Aquino is an employee of the Cambridge Police Department, acting under color of law at all times relative to this Complaint, and is sued in his individual capacity as a police officer for the Defendant City of Cambridge.
6. Defendant Officer Frank Greenridge is an employee of the Cambridge Police Department, acting under color of law at all times relative to this Complaint, and is sued in his individual capacity as a police officer for the Defendant City of Cambridge.
7. Defendant Officer Daniel McNeil is an employee of the Cambridge Police Department, acting under color of law at all times relative to this Complaint, and is sued in his individual capacity as a police officer for the Defendant City of Cambridge.
8. Defendant Lieutenant Timothy Hogan is an employee of the Cambridge Police Department, acting under color of law at all times relative to this Complaint, and is sued in his individual capacity as a police officer for the Defendant City of Cambridge.
9. Defendant City of Cambridge is a municipality duly authorized under the laws of the Commonwealth of Massachusetts.

FACTS

10. On the afternoon of May 6, 2003, the Plaintiff Andrew Jeune, age 17, was walking towards his father's office in Central Square, dressed in a hooded sweatshirt and jeans.
11. He was jogging slowly, so that he would not keep his father waiting, when the Defendant Officers McElroy and Aquino approached him.
12. The Defendants told the Plaintiff to "come here."

13. The Defendants then informed the Plaintiff that there had been an attempted breaking and entering in the area and they were going to arrest him.
14. Defendant McElroy instructed the Plaintiff to get up against their police car.
15. While Defendant McElroy left momentarily to look down a nearby alley, Defendant Aquino told the Plaintiff to put his hands against the car, and then began to feel his stomach.
16. Defendant Aquino proceeded to search the Plaintiff's pockets and pulled out a comb, chap-stick, a subway pass, a pack of gum, ten dollars, and several papers that the Plaintiff was carrying from school.
17. After completing the search, Defendant Aquino put the Plaintiff's hands behind his back and handcuffed him.
18. The handcuffs were extremely tight around the Plaintiff's wrist and they began to impede his circulation.
19. When Plaintiff informed Defendant Aquino that he was beginning to feel faint, Aquino swore at him, calling him a "wuss," or weakling.
20. When he complained that he was experiencing symptoms of an asthma attack, Defendant Aquino told him to stop whining and acting like "a little bitch."
21. The Plaintiff continued to tell Defendant Aquino that he was feeling more and more lightheaded.
22. He then stated that the Defendant was doing this to him "because he is black."
23. Defendant Aquino replied "you think you have it bad nigger, I have to deal with people calling me a spic everyday."

24. Defendant McElroy then returned to the scene of the arrest and brought with him the alleged victim of the breaking and entering.
25. Defendant McElroy instructed the alleged victim to look at the Plaintiff to determine if she could identify him.
26. The woman was unable to make a positive identification. Nonetheless, the Defendants informed the Plaintiff that he was under arrest for breaking and entering despite the lack of probable cause to arrest.
27. Defendant Officer Greenridge then arrived with the transport vehicle.
28. Defendant Greenridge asked the Plaintiff what was wrong, and when the Plaintiff told him he was having an asthma attack, Greenridge told him to “stop fucking lying” and said he must be some sort of “bitch” to be complaining about tight handcuffs.
29. He was taken to the police station, booked by Defendant McNeil, and read his rights by Defendant Hogan.
30. The Plaintiff was then transported to Cambridge Hospital by Officer Greenridge, where he was handcuffed to his bed.
31. He continued to complain that the cuffs were too tight and now requested that he be allowed to speak with one of his parents.
32. Another Officer then entered the room and slammed the Plaintiff down onto the bed, pushing his head into a guardrail.
33. The Plaintiff continued to object to this treatment and, after a short time, another Officer entered the room, tied a strap around Plaintiff’s arm, and secured him to the bed.
34. Finally, he was led from the hospital room towards the exit by several Officers.

35. On the way out the door, one of the Officers kned him in the back, while the others continued to curse at him.
36. Once outside the door, the Plaintiff was pushed into a concrete barrier. Since he was still handcuffed, he lost his balance and landed on his leg.
37. When the Plaintiff complained, the Officers told him to “shut up.”
38. The Plaintiff was then lifted off the ground towards the wagon by his neck.
39. When the Plaintiff asked why he was being choked, an Officer said “maybe this will teach you to go straight to booking instead of wasting our time.” He was then forced into the wagon.
40. Once back at the police station, the Plaintiff was interrogated and then placed in a cell.
41. Finally, he was allowed to make a phone call, but could not reach his parents.
42. He also learned that his bail hadn’t been set, and thus he was forced to spend the night in jail.
43. Subsequently, all criminal charges were dismissed.
44. As a result of this incident, the Plaintiff suffered physical and emotional injuries.

COUNT I
VIOLATION OF 42 U.S.C. §1983
BY ALL INDIVIDUAL DEFENDANTS

45. The Plaintiff restates the allegations in paragraphs 1 through 44 and incorporates said paragraphs herein as paragraph 45.
46. By the actions alleged in paragraphs 1 through 44, the Defendant Officers deprived the Plaintiff of his right to be free from unreasonable seizures, to be free from unreasonable searches, and to be free from the use of excessive force, all in violation of 42 U.S.C.

§1983 and his Fourth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

COUNT II
VIOLATION OF MASSACHUSETTS CIVIL RIGHTS ACT: M.G.L. c. 12, §11I
BY ALL INDIVIDUAL DEFENDANTS

47. Plaintiff restates the allegations in paragraphs 1 through 46 and incorporates said paragraphs herein as paragraph 47.
48. By the actions described in paragraphs 1 through 46, the Defendant Officers violated the Plaintiff's civil rights through threats, intimidation, and coercion, in violation of M.G.L. c. 12, §11I.

COUNT III
VIOLATION OF 42 U.S.C. §1983
BY DEFENDANT CITY OF CAMBRIDGE

49. The plaintiff restates the allegations in paragraphs 1 through 48 and incorporates said paragraphs herein as paragraph 49.
50. By the actions described in Paragraphs 1 through 48 herein, the Defendant City of Cambridge has demonstrated a custom and policy of deliberate indifference to the rights of citizens by:
- a. Failing to train its police officers on the proper use of force, proper search and seizure guidelines and proper arrest procedures;
 - b. Failing to investigate citizens' complaints of excessive force, false arrest and unlawful search brought against its police officers;
 - c. Failing to supervise or discipline officers who are prone to use excessive force, effectuate unlawful seizures, and conduct illegal searches; and

- d. Tolerating a custom and practice in which officers use excessive force, make false arrests, and conduct unlawful searches.

WHEREFORE, the Plaintiff respectfully requests that this Court award:

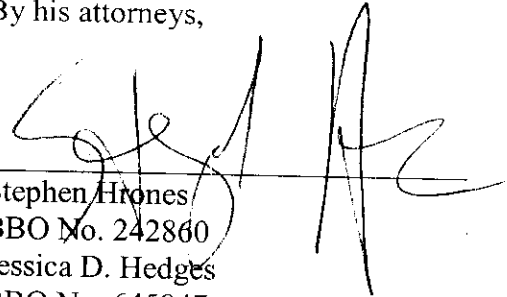
1. Compensatory damages against all Defendants jointly and severally;
2. Punitive damages against the individual Officers;
3. The costs of this action, including reasonable attorneys' fees; and,
4. Such other and further relief as this Court may deem necessary and appropriate.

DEMAND FOR JURY TRIAL

A jury trial is hereby demanded on all counts.

DATED: January 31, 2005

Respectfully submitted
Plaintiff Andrew Jeune,
By his attorneys,



Stephen Hrones
BBO No. 242860
Jessica D. Hedges
BBO No. 645847
Hrones & Garrity
Lewis Wharf – Bay 232
Boston, MA 02110-3927
(617) 227-4019

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Andrew Jeune v. John McElroy, Officer, et al.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- | | | |
|-----------|------|---|
| <u>XX</u> | I. | 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT. |
| | II. | 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. |
| | III. | 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891. |
| | IV. | 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900. |
| | V. | 150, 152, 153. |
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.
N/A
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
- YES ☐ NO ☒
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)
- YES ☐ NO ☒
- IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?
- YES ☐ NO ☒
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?
- YES ☐ NO ☒
7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).
- YES ☒ NO ☐
- A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?
- EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION
- B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?
- EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Stephen Hrones, Hrones Garrity & Hedges, LLPADDRESS Lewis Wharf-Bay 232, Boston, MA 02110TELEPHONE NO. 617/227-4019

(Cover sheet local.wpd - 11/27/00)

FILED
IN CLERK'S OFFICE
2005 FEB -2 P 4:04
U.S. DISTRICT COURT
DISTRICT OF MASS.

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Andrew Jeune

DEFENDANTS

Officer John McElory, Officer Carlos Aquino, Officer Daniel McNeil, Officer Frank Greenridge, Lieutenant Timothy Hogan, and the City of Cambridge

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Middlesex
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Stephen Hrones, Hrones Garrity & Hedges, LLP
Lewis Wharf-Bay 232, Boston, MA 02110
617/227-4019

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in item II)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY:

42 USC §1983

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other			

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

TBD

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT